IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO.1894 OF 2005

IN

SUIT NO.1713 OF 2005

Mr.Suresh Maruti More. ... Plaintiff.

vs.

1.Vaibhav Enterprises & others. ...Defendants

Ms.Priya Ranade i/b. Ms.Swapnila Rane, for Plaintiff.

Mr.K.D.Shah, for Defendant nos. 1 and 3.

CORAM: D.K.DESHMUKH,J.

DATED: 9th March, 2007

P.C.:-

1. This notice of motion is taken out by the plaintiff seeking temporary injunction restraining the defendants from using the plaintiff's registered design nos.183358 and 180432. Both the designs are of the seals which are used in relation to the drum. According to the plaintiff, both the designs are registered under the Designs Act,1911. Therefore, the plaintiff has copyright in both the designs.

The defendants are manufacturing identical designs and selling them and thus, has committed breach of the copyright. An affidavit has been filed on behalf of the defendant nos. 1 and 3 by Vikas V.Gawade who claims to be the proprietor of defendant no.1. According to the defendant no.3 so far as the design at Exhibit B i.e. design no.180432 is concerned, according to him, he has acquired copyright in that design by getting his design registered. He has produced the registration certificate. The registration certificate however shows that it is not registered in the name of the defendant no.1 but it is registered in the name of Vithal Soma Gawade. The defendant no.3 states that Vithal Gawade is his father. The defendant no.1 and the defendant no.3 do not claim to be any assignee of the said Vithal Gawade. It is, thus, clear that the defendant nos. 1 and 3 do not have any right in relation to the design which is registered in favour of Vithal Gawade. If that is so the sole defence raised by the defendant nos. 1 and 3 in relation to the design no.180432 cannot be accepted, and therefore, the plaintiff would be entitled to temporary injunction in that regard.

2. So far as the second design viz. design no.183358 is concerned, according to the defendant nos. 1 and 3, there is no novelty in that design and that design is commonly used in the market. The defendants are selling similar design and the manufacturer Sai Seals since last many years and he craves leave to refer to and rely upon the

seals of M/s. Sai Seals. Accordingly, similarly one Mr.Lave & Ambodaskar & company is also manufacturing similar seals. He craves leave to refer to and rely upon the seals with design similar to the plaintiff's seal available in the market. He also claims that these seals are available in the market. But the defendant nos. 1 and 3 have not produced any material on record to show that for similar seals manufactured by the persons whose names are disclosed in the affidavit are either freely available in the market, what is the volume of the business done by those parties. That would be necessary to be established by the defendants to show that the seals in relation to which the plaintiff is claiming copyright are common in the market. In the absence of defendant nos. 1 and 3 producing any material, the claim of the plaintiff at this stage will have to be accepted. The plaintiff, therefore, would be entitled to interim order in relation to the design at Exhibit A also.

3. In the result therefore, this notice of motion is granted in terms of prayer clause (a) and (b).

Notice of motion is disposed of.

4. At the request of the learned Counsel appearing for defendant nos. 1 and 3, the order granted in terms of prayer clause (b) is stayed for a period of four weeks.